

## ANALYSIS OF ORIGINAL BILL

Author: Rainey Analyst: Gloria McConnell Bill Number: SB 1508

Related Bills: See Legislative History Telephone: 845-4336 Introduced Date: 2/06/98

Attorney: Janet Ballou Sponsor:

SUBJECT: Child Support Delinquencies/Lien against State Claims

### SUMMARY

This bill would create a lien for support arrears against civil monetary claims, settlements or judgments to be paid by the state to the obligor of the support arrearage. The lien would be subordinate to any lien for medical and legal expenses directly connected to the claim, and procedures are provided for disputes.

Additionally, upon determining that a claim will be paid, the state, as defined to include local government, would notify the Franchise Tax Board (FTB), who would issue an order to withhold payment or notify the state that no lien or delinquency exists.

This is an analysis of the bill as it affects FTB.

### EFFECTIVE DATE

This bill would be effective and operative on January 1, 1999.

### LEGISLATIVE HISTORY

AB 1832 (Cardenas, 1998), AB 1666 (Alquist, 1998); AB 1662 (Alquist, 1998); AB 2094 (Morrissey, 1998); SB 1508 (Rainey, 1998); AB 2343 (Woods, 1998).

### PROGRAM HISTORY/BACKGROUND

Federal law requires each state to have a single agency responsible for enforcing child support, but permits delegation of specific tasks to local levels. The Department of Social Services (DSS) is designated as the California state agency. By state law, the county district attorneys (DAs) are delegated responsibility for enforcing child support, which includes collecting current payments and delinquencies. Typically the custodial parent is entitled to receive the support payments on behalf of the child. Before the DA can begin the child support enforcement process, judicial action is required. Once an ordered amount becomes

### DEPARTMENTS THAT MAY BE AFFECTED:

\_\_\_ STATE MANDATE

\_\_\_ GOVERNOR'S APPOINTMENT

#### Board Position:

\_\_\_ S \_\_\_ O  
\_\_\_ SA \_\_\_ OUA  
\_\_\_ N \_\_\_ NP  
\_\_\_ NA \_\_\_ NAR  
\_\_\_X\_\_\_ PENDING

#### Agency Secretary Position:

\_\_\_ S \_\_\_ O  
\_\_\_ SA \_\_\_ OUA  
\_\_\_ N \_\_\_ NP  
\_\_\_ NA \_\_\_ NAR  
DEFER TO \_\_\_

#### GOVERNOR'S OFFICE USE

Position Approved \_\_\_  
Position Disapproved \_\_\_  
Position Noted \_\_\_

Department Director

Date

Gerald H. Goldberg

3/19/98

Agency Secretary

Date

By:

Date

delinquent, DAs are required to search for assets of the obligor and take collection actions as necessary to collect the delinquent account.

In 1993 (Speier, AB 3589; Stats. 92, Ch. 1223), Franchise Tax Board (FTB) began collecting delinquent child support through a pilot project in which DAs in six counties could voluntarily refer their delinquent child support accounts to FTB for collection as though they were delinquent personal income taxes. In 1995, the program was expanded to include voluntary referral from all counties (Speier, AB 923; Stats. 94, Ch. 906). Effective on January 1, 1998, DAs, unless excepted by DSS, are required to refer all child support obligations that they are responsible for enforcing that are 91 days or more delinquent to FTB for collection as though they are delinquent personal income tax liabilities. San Diego County is exempt from the mandatory referral program. Additionally, DAs can voluntarily refer those child support delinquencies that are less than 91 days delinquent to FTB for collection as though they are delinquent personal income taxes. Only child, spousal and family support being enforced by a DA pursuant to the W&IC are subject to referral to FTB. No collection action may be taken for certain delinquencies, in which case the account is not referred or is withdrawn from FTB. To collect delinquent child support, FTB may use any of its information sources and tax collection remedies. Upon referral of the child support delinquency, FTB issues to the obligor a notice of the amount due and, if payment is not made, may issue withhold orders to attach bank accounts under Section 18670 or 18670.5 or an earnings withholding order under the Code of Civil Procedure.

Additionally, DAs are authorized to refer current child support orders to FTB for collection, in which case FTB uses tax information to issue wage assignment orders (AB 573, Kuehl; Stats. 97, Ch. 599).

In response to a federal mandate, AB 702 (Stats. 97, Ch. 697) requires each county to compile a list of child support obligors, with the intent that FTB will receive the entire list of past-due obligors. FTB must match the list with customer information received from financial institutions, and FTB will issue an order to withhold (OTW) upon request from the county responsible for the account.

Issuing a withholding order does not require a judgment or the existence of a lien. To issue a withholding order, FTB needs to know an amount that is due a debtor or will become due and who has control of or holds the funds. The amount that a withholding order attaches depends upon the type and nature of the asset. For bank accounts, cash, cash equivalents and claims described under this bill, 100% of the amount due and payable to the obligor at the time the OTW is received may be attached.

Under the Government Code, the Controller may offset any amount the state owes a person against any amount the person owes the state (Section 12419.5) or city or county (Section 12419.8). In most cases, however, this is a manual process, except that under Section 12419.2, FTB operates and administers an automated offset (intercept) program for the Controller. For the intercept program, the FTB is notified by various state and local agencies on an annual basis, of amounts, subject to adjustments, owed them, which includes child support delinquencies. All personal income tax refunds and lottery winnings, which are issued by the Controller, are matched against this intercept data base. When a match occurs, the amount owed the debtor is intercepted by FTB for purposes of

payment of that debt, and the remainder, if any, is sent to the debtor. The intercept data base currently does not include all child support delinquencies.

A lien creates an encumbrance on the property or the person's interest in the property. For the holder of a lien to enforce or otherwise act on the lien, generally requires that the lien be a matter of public record. In the event of competing liens, the lien priority is determined at the time the lien arises. For the lien to be effective in competing against other liens, generally the lien must be recorded. To encumber real property, liens are recorded in the county where the property is located. To encumber personal property, liens would be recorded with the Secretary of State.

For tax collection purposes, however, liens arise without recording but are used only when competing with liens of other governmental taxing agencies. To compete against the liens of all other creditors, the FTB issues a notice of tax lien that is recorded in the county of residence. Under current practice, a notice of state tax lien is issued for any tax delinquency in excess of \$250. For child support collection purposes, the DAs, not FTB, are responsible for recording and enforcing liens.

#### SPECIFIC FINDINGS

**Currently**, FTB, as a state agency, may pay civil monetary claims, settlements or judgments. These amounts to be paid are scheduled by FTB, or through the Board of Control (BOC) in certain cases, and the Controller pays the amount directed by the state agency.

**Under this bill**, governmental agencies, which would include the BOC and the Controller, would notify FTB of pending payments. Upon notification, FTB would be required to issue orders to withhold payment or notify the agency that no lien or delinquency exists.

#### Policy Considerations

FTB also administers the Personal Income Tax Law (PITL) and Bank and Corporation Tax Law (BCTL). The administration of these laws may be enhanced if the information received from the governmental agencies regarding payments of civil monetary claims, settlements or judgments also could be used to withhold these payments for tax collection purposes.

#### Implementation Considerations

The manner in which this bill would be implemented would depend upon the number of payments, the number of governmental agencies that would be notifying FTB, the time frame, if any, in which FTB would be required to respond, and the extent to which the process could be automated.

Additionally, FTB staff has identified the following implementation considerations:

- It is unclear what is meant by "civil monetary claims." Staff is uncertain whether such claims would be limited to judgments or is intended to have a broader meaning. It is presumed that such claims are

not intended to include claims for income tax refunds as income tax refunds are attachable through the offset/intercept program, but this should be clarified.

- Upon notification that payment is to be made, FTB is required to issue an OTW or notify the "state agency" that neither a lien nor delinquency exists. It is unclear why FTB staff also would have to notify the governmental agency that there is no lien as the existence of a lien has no relevance to the OTW that would be issued by FTB. In addition, rather than requiring FTB notify the governmental agency that no delinquency exists, it may be more efficient if FTB had a reasonable time for issuing the OTW.
- It is presumed that the governmental agency affected by the claim, settlement or judgment would be responsible for notifying FTB so that FTB would issue the OTW to that agency for payment. However, for state claims where the payment is made through the Board of Control (BOC), it may be appropriate for the BOC to make the notification, as payment is contingent on legislation. This should be clarified.
- The lien that is created by this bill would be subordinate to medical and legal expenses (third party claims), and a procedure is provided to resolve these types of disputes. However, an OTW issued by FTB it is not directly affected by the lien priority established in this bill. An OTW is an action separate and apart and unrelated to the lien. If, however, a third party claim were made on funds subject to the OTW, the claim would be taken into consideration. If there were a dispute, the OTW is required to be honored for the amount directed by FTB, and appropriate legal action can be taken by the third parties.

#### Technical Considerations

Staff has identified the following technical considerations:

- Paragraph (2) of subdivision (a) limits the "support arrears" to arrearages both being enforced by DAs and referred to FTB pursuant to section 19721.6 of the Revenue and Taxation Code. No accounts are referred to FTB under this section; however, under this section each county must compile a list of accounts subject to collection action. Under Section 19271, child support delinquencies that are at least 91 days past due are referred to FTB for collection.
- It appears that the intent of subdivision (c) is to establish the amount of the lien as of a date certain by making it the amount of the delinquency for which FTB can take OTW collection action under specified sections of law. However, these particular collection actions are taken on child support delinquencies only when there is a match with information received from banks or other third-parties, which is not inclusive of all child support delinquencies.

## FISCAL IMPACT

### Departmental Costs

Department costs cannot be determined until the implementation considerations are resolved.

### Collection Estimate

Based on the discussion below, accelerated collections of child support on referred accounts to FTB are estimated to be minor, less than \$250,000 annually after full implementation and compliance by California government agencies.

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

### Collection Estimate Discussion

The collection impact of this bill would depend on (1) the number of delinquent child support obligors who have money due from governmental agencies for payment of claims, settlements, and judgments, (2) the net amount of the claim, assuming the OTW would not attach amounts associated with medical and legal expenses, (3) the total amount owed for delinquent child support by the obligor, and (4) whether governmental agencies would be reimbursed for their costs to comply, and thereby encourage compliance, with this bill.

Estimated collections were determined in several steps. First, the total amount of damages awarded by a lawsuit or settlement was based on information obtained from judicial periodicals published July 1996. According to these periodicals an estimated \$1.5 billion in damages (excluding punitive damages) was awarded by California courts. Of this total, it was estimated that approximately 75% of the claims are attributable to insurance settlements. This yields approximately \$375 million in settlement claims other than insurance settlements (\$1.5 billion x .25%). Assumptions were made that of all damages awarded, only one third will be paid. This yields approximately \$125 million in actual paid damages (\$375 million x 33%). If as much as 10% of the total paid damages is attributable to claims against California governments, California governments will pay out approximately \$12 million in claims annually.

The next step was to determine the amount of damages awarded to delinquent child support obligors. It was assumed that approximately 5% of net damages would be awarded to individuals with child support obligations. Of this total, it is estimated that approximately 50% will be attributable to medical expenses and attorney fees. This yields approximately \$300,000 in net damages paid to obligors (\$12 million x 50% x 5%). Of the estimated net damages received by delinquent obligors, it was estimated that approximately 40% of the amount would satisfy the obligors' delinquent child support. This was based on information from the U.S. Statistical Abstract and the child support collections program. According to these sources the average net civil damage award after adjustments (actual amounts paid, medical

expenses and attorney fees) would be approximately \$37,000, and the average amount of delinquency owed by obligor would be approximately \$15,000.

Finally, it was assumed that lawsuits against the government represent approximately 50% of all government claims paid.

The estimated impact of this proposal, therefore, is on the order of \$250,000 annually in accelerated collections after implementation.

BOARD POSITION

Pending.